

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

M-B-W, INC., and BARIKELL S.r.l.

Plaintiffs/Counterdefendants

v.

MULTIQUIP, INC., and
ALLEN ENGINEERING CORPORATION,

Defendants/Counterclaimants

Case No. 07-C-390

MULTIQUIP, INC., and
ALLEN ENGINEERING CORPORATION,

Counterclaimants

v.

M-B-W, INC. and BARIKELL S.r.l.,

Counterdefendants.

ORDER

The plaintiffs/counterdefendants, M B W Inc. ("M-B-W") and Barikell S.r.l. (Barikell), and defendants/counterclaimants, Multiquip, Inc. ("Multiquip") and Allen Engineering Corporation ("Allen"), have filed a Stipulated Joint Motion for Dismissal of Certain Claims and Other Relief.

M-B-W and Barikell have asserted claims/counterclaims seeking a declaratory judgment of non-infringement, invalidity and misuse of U.S. Patent Nos. 5,816,740, 5,890,833, 6,053,660 and 6,106,193. Pursuant to this Court's August 19, 2008 Order (Dkt. #55), M-B-W and Barikell amended their pleading (Dkt. #56) to allege

inequitable conduct relative to U.S. Patent Nos. 5,890,833, 6,053,660 and 6,106,193.

Multiquip and Allen Engineering have asserted claims/counterclaims alleging infringement of U.S. Patent Nos. 5,816,740, 5,890,833, 6,053,660 and 6,106,193.

The parties have conducted fact discovery and have exchanged expert witness reports. This Court has jurisdiction of the parties and the subject matter of this suit. Venue is proper.

IT IS THEREFORE ORDERED that the Joint Motion to Dismiss Certain Claims and Other Relief (Docket #66) is **GRANTED** as follows:

1. None of the products of M-B-W that have been manufactured, used, sold, offered for sale, imported, exported, or were otherwise in existence in or to the United States of America or its Territories at and prior to the entry of this Order infringe any of the claims of U.S. Patent Nos. 5,890,833, 6,053,660 and 6,106,193, either literally or under the doctrine of equivalents. None of the products of Barikell that have been used, sold, offered for sale, imported or exported in or to the United States of America or its Territories at and prior to the entry of this Order infringe any of the claims of U.S. Patent Nos. 5,890,833, 6,053,660 and 6,106,193, either literally or under the doctrine of equivalents.

2. All claims and/or counterclaims asserted by Multiquip and Allen Engineering concerning U.S. Patent Nos. 5,890,833, 6,053,660 and 6,106,193 are hereby dismissed with prejudice, subject to the terms and conditions as set forth herein.

3. This Court shall retain jurisdiction to hear M-B-W's and Barikell's requests for an award of costs and expenses, including without limitation, attorneys' fees.

4. M-B-W's and Barikell's claims and/or counterclaims alleging invalidity and inequitable conduct involving U.S. Patent Nos. 5,890,833, 6,053,660 and 6,106,193, except as what may be relevant with respect to the claims of M-B-W and Barikell for reimbursement of their costs and expenses, including attorneys' fees, shall be dismissed without prejudice.

5. The parties may take the depositions of the other parties' patent experts, namely, Harry F. Manbeck, Jr. and John L. Alex, at a later time to be agreed upon by the parties, if any party concludes such depositions are necessary or beneficial to adjudication of M-B-W's and Barikell's requests for an award of costs and expenses (including, without limitation, attorneys' fees) or other issues pertinent to any remaining claims, counterclaims, or defenses.

6. Multiquip, Inc. and Allen Engineering Corporation, their officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, are hereby permanently enjoined from threatening or asserting United States Letters Patent Nos. 5,890,833, 6,053,660 and 6,106,193 against M-B-W Inc. and/or Barikell S.r.l., or any seller or user of the ride-on trowels presently marketed by M B W and/or Barikell, or any colorable imitation thereof.

7. The stipulated dismissal with prejudice and the injunction set forth herein shall be non-appealable.

Dated at Milwaukee, Wisconsin, this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmauer".

J.P. Stadtmauer
U.S. District Judge